IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 2570 of 2004
In
SPECIAL CIVIL APPLICATION No. 17426 of 2003
With
CIVIL APPLICATION No. 9992 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)

Versus

SOMABHAI SHAMALBHAI VASAVA - Respondent(s)

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Appearance :
MR KT DAVE, AGP for Appellant(s) : 1,
MR JOY MATHEW for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 04/10/2005

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

Admit. Mr. Mathew waives service for the

respondent. At the joint request of the learned counsel for the parties, this matter is taken up for final disposal today itself and disposed of by this order.

2. The respondent – workman was working with the appellant since 1st January, 1988. Without following the provisions of Industrial Disputes Act, his services were terminated after a period of more than six years on 22nd February, 1994. Thereafter, others were taken in service in his place. Hence, Reference (LCB) No.146 of 1995 was filed by the respondent – workman before the Labour Court, Bharuch. The Labour Court found that the termination was illegal and in violation of the provisions of the Industrial Disputes Act and, therefore, declared the termination illegal and ordered the appellant to reinstate the respondent – workman in service. However, considering the facts and circumstances of the case, the Labour Court awarded 15% back wages by its judgment and award dated 21st March, 2003. This was challenged by the appellant before this court by way of Special Civil Application No.17426 of 2003 which was summarily rejected by the learned Single Judge by his order dated 12th December, 2003. Hence, this appeal.

3. In view of the cogent reasons assigned by the Labour Court while partly allowing the reference in favour of the respondent – workman ordering reinstatement in service, learned AGP Shri Dave was hardly in a position to assail the same more particularly, when his writ petition was also dismissed by the learned Single Judge in limine. However, Mr. Dave submitted that having regard to the facts and circumstances of the case, the Labour Court ought not to have even awarded 15% back wages to the respondent – workman. He submitted that applying principle of 'no work, no pay', the Labour Court ought not to have awarded 15% back wages. This aspect of the case was not at all considered by the learned Single Judge while dismissing the writ petition in limine. He, therefore, submitted that the part of the impugned judgment and award passed by the Labour Court which is confirmed by the learned Single Judge, of awarding 15% back wages, atleast be quashed and set aside while partly allowing this appeal.

4. Mr. Mathew, learned counsel for the respondent, on facts of this case, was hardly in a position to submit otherwise. He was more concerned with reinstatement

rather than the back wages.

5. In view of the above, this appeal is partly allowed and the order dated 12th December, 2003 passed by the learned Single Judge of this court dismissing Special Civil Application No.17426 of 2003 filed by the appellant is set aside to the extent of confirming 15% back wages awarded by the Labour Court. Accordingly, this appeal and writ petition are partly accepted and the impugned judgment and award passed by the Labour Court awarding 15% back wages to the respondent – workman is hereby quashed and set aside. Rest of the impugned judgment and award passed by the Labour Court is confirmed. Now, the appellant is directed to reinstate the respondent – workman in service latest by 31st December, 2005 without fail.

Civil Application No.9992 of 2004 does not survive any more in view of the main appeal being disposed of finally. Accordingly, it is disposed of.

Copy of this order be given to both learned AGP Shri

Dave and Mr. Mathew for the respondent for its immediate implementation.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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